IN THE SUPERIOR COURT OF JUDICATURE
IN THE HIGH COURT OF JUSTICE (COURT 1) HO HELD ON MONDAY 23 JANUARY 2023 BEFORE JUSTICE GEORGE BUADI, J

SUIT NO. E10/02/2023

IN THE MATTER OF APPLICATION UNDER ARTICLE 33 OF THE 1992 CONSTITUTION OF THE REPUBLIC OF GHANA

AND

ORDER 67 OF THE HIGH COURT (CIVIL PROCED.) RULES, 2004 (C. I. 47)

AND

THE INHERENT JURISDICTION OF THE HIGH COURT

BETWEEN

DR. RICHARD AKPLOTSYI		}	….	APPLICANT
AND				
1	HO TECHNICAL UNIVERSITY	}	….	1ST RESPONDENT
2	PROF. BEN QUARSHIE HONYENUGA	}	….	2ND RESPONDENT
3	ATTORNEY GENERAL	}	….	ON NOTICE

JUDGMENT

1 Background

The 1st Respondent herein is a tertiary educational institution of higher learning and a body corporate per the Technical Universities Act, 2016 s. 1(2). It used to be a Polytechnic. 2nd Respondent, at all material times, is its Vice-Chancellor. The applicant until his one-year suspension by 1st Respondent per a letter dated 22 June

2022 (Exhibit Z2) effective 1 July 2022 to 30 June 2023 was a senior lecturer with 1st Respondent. The suspension seems to be the cause of the action.

The applicant claims that arising from a series of misunderstanding engagements with Respondents, the latter had vindictively denied him appointments to available positions he is duly qualified and entitled to in the 1st Respondent institution but the 1st Respondent has resorted to renewing his teaching appointments for a shorter one-year term. Besides, Applicant claims to have been subjected to charges and invitations to disciplinary committees, and that his petitions and appeals to these bodies including committees in charge of promotions and renewal of teaching appointments yielded no positive response but rather 2nd Respondent in his letter dated 22 June 2022 ultimately suspended him for one year without pay effective July 1, 2022, to 30 June 2023.

Citing a litany of other administrative acts of the Respondents that he claims are grossly actuated by malice, vindictiveness, arbitrariness and gross violation of his fundamental human rights, the Applicant on 29 July 2022 per an originating motion pursuant to article 33 of the Constitution, 1992 and under the High Court (Civil Procedure) Rules 2005, (C.I. 47) Order 67, as well as under the court's inherent jurisdiction commenced this action for grant of the following reliefs:

i Declaration as void, the purported notice of suspension letter written by the respondents dated 22nd June, 2022 to the applicant.

ii A declaration that the respondents' conduct towards the applicant is characterized by ill faith, capriciousness and arbitrariness and gross violation of the petitioner's human rights.

iii An order directed at the respondents to reinstate the applicant to his original position as a senior lecturer of the Ho Technical University.

iv By requesting the applicant to re-apply for renewal of his teaching contract which was not applicable to the status of the applicant as a senior lecturer (PhD), the respondent was acting contrary to the terms and conditions affecting the status of the applicant.

v A further declaration that a suspension of one-year without salary handed to the applicant is an affront to the applicant's human rights to work and earn a living.

vi An order for the payment of prompt and adequate damages and compensation to the applicant for the trauma the respondents subjected him through.

2 Preliminaries, and the relevant law on the matter

Strictly speaking, Respondents do not contest the legal framework of the application, as none of their lawyers raised a preliminary legal objection. There were however submissions to the effect that the circumstances of the matter warrant an alternative common law judicial remedy and procedure in the nature of industrial or labour claim, which must have been commenced per a writ of summons other than an originating application under article 33 of the Constitution. Learned counsel for the 3rd Respondent submitted in his statement of case that:

22 … the Republic deems it necessary to state that the dismissal or suspension of any worker in the country is a labour issue purely regulated by the Labour Act of this country and the regulations, and procedures of the organization under which the worker was engaged.

23 Thus the best redress for the Applicant is to resort to a court action upon exhaustion of internal remedy available under the rule regulation and procedures of the organization.

Counsel also submitted that the application was not grounded on any specific constitutional human rights provision.

On his part, learned counsel for 1st and 2nd Respondents submitted that:

> My Lord, relief (e) appears to be a matter concerned with the economic right of the Applicant. [Applicant] supports this claim with the depositions in paragraphs 30 and 32 of the Affidavit in support. But it is submitted that that cannot constitute [a] breach of the fundamental right of the Applicant with respect to his economic rights.

On the Applicant professed economic rights, learned counsel for 3rd Respondent submitted further that:

17 The Applicant contends that his right to work and earn a decent living had been violated following his suspension by the 2nd Respondent, Ho Technical University.

18 My Lord, [the] right to work and earn a decent living … is **not an inherent right that is claimed as of right.** Article 24(1) of the Constitution 1992 titled economic rights [p]rovides that every person has the right to work under satisfactory, safe, and healthy conditions, and shall receive equal pay for equal work without [distinction] of any kind. (Emphasis added)

In his oral submission in furtherance of the above, counsel argued that the right to work and earn a decent living is not an inherent right that can be claimed as of right under Article 24(1) and that, as a right "akin to the right of information … it can only be enforced by the pass [age] of law by parliament or [a] state agency" and that "parliament has passed no such law to enforce the right to work as enshrined in the constitution".

Respectfully, I disagree with such a submission. I need to state here in response that per article 33 clause 5 of the Constitution, the courts are endowed with the powers to protect all human rights provided in the Constitution as in article 24 as well as, indeed, including other rights that have not been specifically mentioned in the Constitution but considered and recognized as inherent in a democracy under an originating application under article 33 of the Constitution under *Order 67 of C.I. 47*.[1] Indeed, human rights generally relate to the protection of a person's dignity and value as a human being within and among a milieu of rights constitutionally guaranteed in a democratic society whether or not the frontiers of that right as skeletally provided in the Constitution have been earmarked and delimited by the legislature.

Even in the purely sovereign British parliamentary system built on an unwritten constitution, the common law courts have not shied away from doing due justice to claims of human rights abuses within the facts placed before them though the British Parliament has passed no law on the subject matter. Back home, even in terms of our hybrid constitutional presidential political system, the courts have not shied away in such circumstances. A typical example is what the Supreme

[1] High Court (Civil Procedure) Rules, 2005

Court sought to do in *Mensa v Mensa* [2012] 1 SCGLR 391 when the Court did not wait for an Act of Parliament as provided under article 22 clause 2 of the Constitution before it pronounced on novel landmark spousal property rights though the subject matter has been in its skeletal raw form mention in article 22 clause 1 of the Constitution when the opportunities for consideration and delimitation of such subject matter rights arose before the Court. Therefore, my view is that there need not necessarily be an Act of Parliament on a constitutionally guaranteed right matter before the courts take up a call for the protection of that right.

On his part, learned counsel for the 1st and 2nd Respondents submitted that the application is not one to which Article 33 of the Constitution applies, citing "*Ackah v. Agricultural Development Bank* [2016-2017] 1 GLR Rule 552 at Ruling 6". There appears to be an incorrect or improper citation here; indeed, respectfully, I am doubtful of the correctness of the learned counsel's citation and the ruling he ascribes to the suit as above. My research led me to either the same suit *Ackah v. Agricultural Development Bank* or perhaps a similar suit with a different citation and a different decision from what learned counsel ascribes in support of his submission that the application is not one to which Article 33 of the Constitution applies. In my version of the case *Ackah v. Agricultural Development Bank* [2017-2020] 1 SCGLR 226 (Holding 3), the Court presided by Dotse JSC allowed in part the applicant's appeal from the High Court and the Court of Appeal within the circumstances of submissions of counsel, and held in part that:

> Both the Court of Appeal and the High Court committed errors of law in deciding that the contract of employment between the applicant and the respondent bank constituted **an exception to the general provisions of the protection of fundamental human rights.** (Emphasis added)

All the same, I deem it pertinent to refer to the law under which the application was founded to respond further to the submissions of the Respondents' counsel on the matter. The Constitution, Article 33 provides:

> **Protection of rights by the Court**
>
> (1) Where a person alleges that a provision of this Constitution on the fundamental human rights and freedoms has been, or is being or is likely to be contravened in relation to him, then, **without prejudice to any other action that is lawfully available, that person may apply to the High Court for redress.** (Emphasis added).

Further, the High Court (Civil Procedure) Rules, 2004 (C.I. 47) Order 67 provides for the procedure for invoking the human rights jurisdiction of the Court under Article 33(1) of the Constitution as follows:

> ENFORCEMENT OF FUNDAMENTAL, HUMAN RIGHTS
>
> **Application for redress under article 33 of the Constitution**
>
> 1. A person who seeks redress in respect of the enforcement of any fundamental human right **in relation to the person** under article 33 (1) of the Constitution **shall submit an application to the High Court**. See also art. 130.
> 2. …
>
> **Time for submission of application.**
>
> 3. (1) The application shall be submitted to the High Court **within**
>
> ***(a)*** **six months of the occurrence of the alleged contravention**: or
>
> *(b)* three months of the applicant becoming aware that the contravention is occurring or is likely to occur. (Emphasis added)

From the above readings, a person who seeks to protect and enforce remedies provided for human rights under Article 33 of the Constitution could apply to the High Court within six months without prejudice to any other action that is lawfully available to him by way of a common law remedy and procedure. In my view therefore, the Applicant is at liberty to resort to an originating application to the High Court for the redress of his rights he claims were breached by Respondents.

Learned counsel for 3rd Respondent is however right in his submission that:

> The right to work [and to earn a daily earning] is subject to conditions among other things a person's qualification and in any case subject to discipline, the rules and regulations of the organization that the citizen is engaged under".

Indeed, an act is unlawful only when it is not justified by law. When an act or omission is justified or protected by a law of general application, a person affected by that act or omission cannot claim to have been negatively affected or that his human rights under that law, act or omission have been breached.

The facts in this matter were not seriously contested, the Respondents justified the facts by the statutes of the University. The following are the brief facts of the case. The Applicant herein joined 1st Respondent institution, then Ho Polytechnic in 1998 as an Assistant Instructor at the Department of Building and Civil Engineering. His appointment was confirmed in November 1999 by the 1st Respondent, then still a Polytechnic. The Applicant rose through the ranks to a

senior lecturer (PhD) upon promotion on September 1, 2014, by 1st Respondent, then still a Polytechnic. He claims that the promotion to the rank of senior lecturer PhD came without any contract nor reference to any guiding documents but on 12 November 2014, barely two and a half months after his promotion as a senior lecturer, he received a letter Exhibit F from 1st Respondent that sought to tie the appointment to a contract of six years that expires on 31 August 2020 though the letter did not refer to any statute or governance instrument of the Polytechnic.

From the engagements of the parties that reflect on the voluminous papers, what might have been 'the last straw that broke the camel's back', and triggered the application, indeed the cause of the action is 2nd Respondent's letter to the Applicant dated 22 June 2022 Exhibit Z2 that suspended Applicant for one year without pay effective July 1, 2022, to 30 June 2023. Having filed this application just close to two months after receipt of the letter and indeed, within the 'six months' as prescribed by Order 67 Rule 3(a) of C.I. 47 id., the Applicant, in my view has legitimately invoked the court's jurisdiction.

3 Finding primary facts, and the application of the law.

The matter is being considered per affidavit evidence. Though trials are naturally and indeed relatively expeditious, originating applications have their vicissitudes, as proof of claims is verifiably proven solely by affidavit evidence without the test of cross-examination. If learned counsel was correct in his citation of *Ackah v ADB*, that seems among others to be the import or the *obiter dicta* of the Court, indeed, an admonition that "commencement of the action by a writ of summons would have afforded the applicant an opportunity to have led evidence on what appeared to be her wrongful termination of employment and subjected her to cross-examination." None of the parties in the matter requested an order for any

of the claims to be contested on cross-examination. The court was cautious to call for one; indeed, I found it needless.

The applicant's case is grounded on a cumulatively hefty 387-page neatly ringed-bound document that comprises an 8-page motion paper and 32-paragraph affidavit deposition in support; a 4-page certificate of exhibits and a further 350-page exhibits marked as Exhibits A - Z, as well as an 8-page counsel's statement of case. The applicant's case includes a further 25-page affidavit that he filed upon leave, attached with Exhibits Z3 and Z3.

The Respondents contest, indeed oppose the application per a total 129-page 43-paragraph affidavit deposition that was filed by the 2nd Respondent for himself and on behalf of 1st Respondent, attached with exhibits marked PBQH1 to PBQH9. There is a further learned counsel's 16-page statement of case. Respondents' case includes a further 101-page 10-paragraph affidavit in opposition filed by the Registrar on behalf of 1st Respondent upon leave. It is attached with exhibits marked PBQH 10 and PQBH11.

The Attorney-General had been served a copy of the suit as a nominal party. I take notice therefore of a 5-page 28-page paragraph statement of case filed on his behalf by the Ho Office. Curiously, the submission is not supported by reference to any case law on the matter. I am grateful to the lawyers for distinctively marking the exhibits attached to their papers, which facilitated identification and study.

I reiterate here that the Respondents do not dispute most of the factual dispositions of the Applicant. The reason, in my view, stems from the fact that most of the documents tendered in support of the claims happen to be correspondence over

the period between the parties except that, according to the Respondents, all their actions and omissions that the Applicant finds offensive, which forms the basis of his action are supported by law, particularly, its governing statutes, first as a Polytechnic, and later as University. By such a defence, indeed denial and opposition to the application, the duty is cast on Applicant to establish his case by satisfactory proof to ground the reliefs he seeks, i.e. that the acts and omissions of Respondents were not supported by any law or governing statute of the University but that they are "characterized by ill faith, capriciousness and arbitrariness and gross violation of [his] human rights". Respondents assume the duty to justify their actions and omissions.

Respondents do not deny Applicant's claim of engagement by 1st Respondent (then a Polytechnic) as Assistant Instructor in 1998; confirmation thereof in 1999 of the appointment; promotion in 2002 as Instructor; further promotion in 2007 as a lecturer; redesignation as "a lecturer PhD" with six-year "teaching appointment contract" effective February 2007; renewal in March 2013 of the 6-year "teaching appointment contract" to expire in February 2019; indeed promotion in September 2014 to the rank of a senior lecturer PhD by 1st Respondent, still then a Polytechnic

I find Applicant making references to his "teaching appointment contract" with the then Polytechnic only to turn around to claim that the appointments "were without reference to any guiding documents" and also "without any contract" and reference to statutes nor any governance instruments. So does he claim that the six-year contract as in Exhibit F was met with *furore* from the Teachers' Union who met the management of the Polytechnic over the six years contract appointment Exhibit F. That claim inherently suggests that the act - the six years contract appointment -of the 1st Respondent (then Polytechnic) was an act of general

application to all teaching staff and that it was not targeted arbitrarily at the Applicant.

From the papers filed in the matter, what appears to me as the genesis of the Applicant's constant engagements with Respondents and his suspicion thereof that his case and treatment by Respondents is tainted possibly by arbitrariness, bias and vindictiveness stem from a letter he and Dr Cephas Bosrotsi authored addressed to the Interim Vice-Chancellor that "call[ed] for probe into the award of PhD, recognition of certificate and use of the title 'Doctor' by Mr Ben Q. Honyenuga."[2] In that letter, the Applicant and his colleague raised a litany of issues that sought to question the source and legitimacy of the PhD certificate and the use of the title 'Dr' by Ben Honyenuga as

> [I]rreconcilable with the professed values of a university of high standing such as Ho Technical University which had well-laid down procedures for the acquisition and use of certificates in such an academic environment".

Respondents admit not only the letter Exhibit G but also admitted responding thereto as in Exhibit G2. 1st Respondent's response to the petition was in such a frontally ferocious tone, which in my view amounted to daring the petitioners' audacity for the call, that is:

- The Interim Vice-Chancellor does not owe any individual … in the University an explanation for [the] educational qualifications of any staff of the University or the institution they attended and use of titles.

[2] The current Vice-Chancellor and 2nd Respondent herein

- You do not have the locus to ask for a probe …
- Your request and questions smack of personal vendetta …"
- You are admonished to take a cue from Mathew 7:5 which advises us to endeavour to "first cast out the beam out of thine own eye …"

I find the 1st Respondent's response uncharacteristic of an academic environment of higher learning of free speech and expression and global best practices of good governance, particularly in a state/public institution of higher learning. The call for probe by the Applicant and his colleague Dr Cephas Bosrotsi triggered a stage for a probe not directed at the PhD credentials of Ben Honyenuga but rather one of referral of the Applicant to the "Chairman Council, the Academic Board and Dr Ben Q. Honyenuga …" ostensibly to probe rather into Applicant's audacious call for the probe of 2nd Respondent's PhD, and as the Registrar biblically sounded in his response, to clinically "cast out the beam out [the applicant's] eye".

Arising from the above, I am compelled as a duty therefore to watch closely the subsequent acts and decisions of the Respondents that affect the Applicant and to ascertain whether those acts or omissions are actuated or tainted by bias, prejudice or discrimination, express or subtle that affect therefore the value and dignity of the Applicant as a senior lecturer PhD in such an academic environment.
There is no dispute the fact that the 1st Respondent used to be a Polytechnic. It was converted into a university per the Technical Universities Act, 2016 (Act 922), and its further amendment the Technical Universities (Amendment) Act, 2018 (Act 974). By the said statutes, all employees of the hitherto Polytechnics, including Ho Polytechnic were deemed to have been employed by the respective Technical Universities and further governed by the parent or founding statutes – Act 922, and 974 id., particularly Statutes 41(3) (4) and (5) relating to vacancies.

The Applicant claims that he is a tenured staff; that is, his rank as senior lecturer did not ordinarily call for periodic renewal of contracts of employment, and that the calls on him by the 1st Respondent for renewals of his teaching appointment and further limitation of the appointment to a one-year contract had been without basis in law or the governing statute of the University. His view appeared to be anchored, firstly, on his hitherto six-year contract appointments, and secondly, what he claims to be the Registrar Mr David Jonto's statement that "there was no legal basis for the letter but it was only meant to keep [teaching] staff to their toes to work harder". This, according to the Applicant was the response of the Registrar to the furore from the Teachers' Union to the introduction of time-period contracts to teaching personnel of the University. *See para. 9 of Applicant's affidavit in support.*

Respondents deny this claim. The denial of the claim compels a mandatory duty of proof on the Applicant of the claim that his rank as a senior lecturer PhD is a tenured staff. I find no proof, particularly as would have expected in the further affidavit that the Applicant filed upon leave. I find on the contrary from Respondent that Schedule E32 of the Statute of the University provide for matters of re-appointment. I find on record evidence of the Applicant's appeal against calls on him for his contract appointment renewal. The University's Appeals Board in its decision on 5 August 2021 as in Exhibit T dismissed the Applicant's appeal and held in paragraph 2 of page 7 that:

> Appellant's teaching appointment is **not tenured** and falls within the Senior Members whose contract ought **to be renewed within the purview of schedule E32** of the Statutes of the University. This is further buttressed by Schedule E9 which provides for a first regular six-year contract. (Emphasis added)

I have the calmness to hold therefore that the Applicant's status as a senior lecturer PhD is not a tenured position and that Respondents were not acting contrary to the terms and conditions of the Applicant as a senior lecturer when 1st Respondent requested Applicant to re-apply for renewal of his teaching contract for one year as a Senior Lecturer (PhD). Besides, I find, firstly, that the governing provision in the statute E32 is one that applies generally to all the teaching staff, and secondly, there is no evidence that suggest even subtly that the application of the provision of the governing statute E32 was tainted by bias, prejudice, and arbitrariness.

The Applicant claims further that contrary to the provisions in the governing statute of 1st Respondent that is, Statutes 41(3) (4) and (5), Respondents have refused to appoint him to positions of the University though he is qualified, and that the refusal smacks of arbitrary use of discretionary power. I have read and considered Statutes 41(3) (4) and (5), which essentially provide that:

(3) Each Faculty/School shall be headed by a Dean who will be assisted by a

Vice-Dean.

(4) The Dean shall be appointed from amongst **the academic senior** members of the Faculty/School/Institute who are of **professorial status.**

(5) Where there are no suitable academic senior members of professorial status in the Faculty/School the Dean may be appointed from a cognate Faculty."

The above provisions stipulate that appointments to the position shall be by seniority. Apart from his claim of due qualification, the Applicant provides no evidence that he was the most senior and most qualified with professorial status for the position of Dean. The applicant made no such claim here. Besides, appointments to such positions of higher academic learning are not strictly based and filled only by seniority and due qualification but also in consideration of other factors the distinguished panel deem crucial for the position. There is no claim here that the 2nd Respondent was a member of the Appointment Board perhaps to have influenced expressly or subtly the denial of the Applicant of the position.

Indeed, because of Applicant's suit at the High Court against the 2nd Respondent in particular, the Appeals Board recommended that the 2nd Respondent recused himself from deliberations concerning the renewal of the teaching appointment contract by the Applicant. I find no evidence that suggests that the 2nd Respondent did not abide by the recommendation of the University's Appeals Board. Besides, I cannot find any proven claim of lack of a due process of law as well the possibility subtly of resentment, ill-will and bad faith against Applicant by 2nd Respondent in particular, due possibly to Applicant's call for probe of 2nd Respondent's PhD credentials to compel me of the need to enforce the application of articles 23 and 296 of the Constitution involving the exercise of discretionary powers.

In all these, I find no proven claim of procedural lapse/lapses in the proceedings of the Committees before whom the Applicant appeared, particularly, the Disciplinary Committee concerning the charge of academic dishonesty. In setting up of the Committee as provided by Statute No. 52 (c), a formal charge was served on the Applicant as per a copy of Applicant's Exhibit 'Y1'. The applicant's response to the charges was contained in his Exhibit 'Y2'. The applicant attended the

hearing and gave his side of the story, indeed admitting the offence of academic dishonesty for which he apologized. Surely, it is difficult to find anyone caught with such academic sin not to admit and apologise, considering the consequences. I found no evidence of pressure or undue influence that was brought to bear on Applicant.

Indeed, not unlike in an examination hall, a scenario that the Applicant must be so familiar with as a senior lecturer, once the examination papers are retrieved at the close of the examination, any mistake a candidate claims to have committed on his answer paper, accidental or inadvertence, cannot be corrected, as the candidate cannot retrieve his answer paper for his mistake to be corrected. The die is then cast! The candidate must pay the penalty thereof, wait for the next examination and to be cautious not to repeat the mistake. The eminent panel, which had not been proven here to include the 2nd Respondent, found the alleged mistake and the explanation by the Applicant to be unconvincing. I have no basis to fault their decision as one that was actuated by bias, malice, or arbitrariness.

On 31 May 2022, the report of the Disciplinary Board was submitted to the 2nd Respondent who on 22 June 2022, compelled by the governing statute wrote and published the letter that suspended the Applicant for twelve months without pay, taking effect from July 1, 2022, to 30 June 2023. The Applicant had attached a copy as Exhibit 'Z2'. The applicant's claim that "no publication of the results of the disciplinary action was published or communicated to him" cannot be truthful, indeed unproven.

4 Conclusion

I reiterate in conclusion that an act or omission can only be unlawful amounting arguably to a breach of one's human rights when the act or omission cannot be

justified by law. When an act or omission is justified by a law of general application, a person affected by that act or omission cannot claim to have been negatively affected amounting to a breach of his human rights and mount an action founded on the act or omission.

The courts exist to uphold and apply the law. I find it worth emphasizing the *dictum* of Archer JA (as he then was) in *Asare v. Brobbey* [1971] 2 GLR 331 page 338, when the learned judge cited and relied on *Philips v. Copping* [1935] 1 KB 15 page 21 to say that "it is the duty of the court when asked to give a judgment which is contrary to a statute to take the point [of law] although the litigants may not like it".

I hold that the Applicant has failed to establish proof, firstly, that the acts and omissions of Respondents that form the basis of his action are without legal basis, and secondly that the laws were or had been applied to him with bias, arbitrariness, ill will and prejudice to form the basis of human rights violations under article 33 of the Constitution. I hold that the acts and omissions of the Respondents relating to Applicant were acts and omissions of general application founded on the governing statute of the 1st Respondent which I did not find to have been applied unfairly, capriciously against the Applicant against his human rights.

The action fails, and that same is hereby dismissed, as without the requisite proof.

(Sgd.) George Buadi, J.

Justice of the High Court

Ho.

Lawyers:

1 Emile Atsu Agbakpe, Esq. for Applicant

2 Oscar Vulor, Esq. for 1st and Respondents

3 Ms Freda Sithoefe Ameke, and Anthony Attakuma Ghattie, Esq. (Both Assistant State Attorneys) for 3rd Respondent.